

This grant may not be funded unless the following two conditions occur within ninety (90) days from the date of mailing of this Agreement package: 1) the return of a complete and signed Grant Agreement; and 2) the full payment of all outstanding debt(s) owed by the proposed Grantee to the California Integrated Waste Management Board.

EXHIBIT A

TERMS AND CONDITIONS

1. **Definitions.** The following terms used in this Agreement have the meanings given to them below, unless the context clearly indicates otherwise.
 - a. "IWMB" means the California Integrated Waste Management Board.
 - b. "Executive Director" means the Executive Director of the IWMB, or his or her designee.
 - c. "State" means the State of California, including, but not limited to, the IWMB and/or its designated officer.
 - d. "Grant Manager" means the IWMB staff person responsible for monitoring the grant.
 - e. "Grantee" means the recipient of funds pursuant to this Agreement.
2. **Availability of Funds.** The IWMB's obligations under this Agreement are contingent upon and subject to the availability of funds appropriated for the grant.
3. **Payment.**
 - a. The Budget, attached to and incorporated herein by reference to this Agreement as Exhibit D, states the maximum amount of allowable costs for each of the tasks identified in the Work Statement, which is attached to and incorporated herein by reference to this Agreement as Exhibit C. The IWMB shall reimburse the Grantee for only those services specified in the Work Statement at only those costs specified in the Budget.
 - b. The Grantee shall carry out the work described on the Work Statement in accordance with the Budget, and shall obtain the IWMB's written approval of any changes or modifications to the Work Statement or the Budget prior to performing the changed work or incurring the changed cost. If the Grantee fails to obtain such prior written approval, the Executive Director, at his or her sole discretion, may refuse to provide funds to pay for such work or costs.
 - c. The Grantee shall request reimbursement in accordance with the procedures described in the Administrative Procedures and Requirements, which is attached to and incorporated herein by reference to this Agreement as Exhibit B.
4. **Failure to Perform as Required by This Agreement.** The IWMB will benefit from the Grantee's full compliance with the terms of this Agreement only by the Grantee's (a) investigation and application of technologies, processes and devices which support reduction, reuse and/or recycling of wastes; or (b) cleanup of the environment; or (c) enforcement of solid waste statutes and regulations, as applicable. Therefore, Grantee shall be in compliance with this Agreement only if the work it performs results in (a) information, a process, usable data or a partial product which can be used to aid in reduction, reuse and/or recycling of waste; or (b) the cleanup of the environment; or (c) the enforcement of solid waste statutes and regulations, as applicable.
5. **Stop Work Notice.** Immediately upon receipt of a written notice to stop work, the Grantee shall cease all work under this Agreement.
6. **Disputes.**
 - a. Notwithstanding Section 4 above, the Grantee shall continue with the responsibilities under this Agreement during any dispute.
 - b. If the Grantee and the Executive Director fail to agree on a matter relating to this Agreement, the IWMB shall, upon the request of the Grantee or the Executive Director, consider and make a determination regarding the matter.
 - c. Notwithstanding this Section, the Grantee shall have no right to request that the IWMB make any determination regarding any matter committed by this Agreement to the sole discretion of the Executive Director.

7. Discretionary Termination. The Executive Director shall have the right to terminate this Agreement at his or her sole discretion at any time upon thirty (30) days' written notice to the Grantee. Within forty-five (45) days of receipt of written notice, Grantee is required to: 1) submit a final written report describing all work performed by the Grantee, 2) submit an accounting of all grant funds expended up to and including the date of termination, and 3) reimburse the IWMB for any unspent funds.
8. Termination for Cause. The IWMB may terminate this Agreement and be relieved of any payments should the Grantee fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination, the IWMB may proceed with the work in any manner deemed proper by the IWMB. All costs to the IWMB shall be deducted from any sum due the Grantee under this Agreement.
9. Forfeit of Grant Funds/Repayment of Funds Improperly Expended. If grant funds are not expended, or have not been expended, in accordance with this Agreement, or if real or personal property acquired with grant funds is not being used, or has not been used, for grant purposes in accordance with this Agreement, the Executive Director, at his or her sole discretion, may take appropriate action under this Agreement, at law or in equity, including requiring the Grantee to forfeit the unexpended portion of the grant funds and/or to repay to the IWMB any funds improperly expended.
10. Audit/Records Access. The Grantee agrees that the IWMB, the Department of Finance, the Bureau of State Audits, or their designated representative(s) shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. The Grantee agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated, or until completion of any action and resolution of all issues which may arise as a result of any litigation, dispute or audit, whichever is later. The Grantee agrees to allow the designated representative(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Grantee agrees to include a similar right of the State to audit records and interview staff in any contract or subcontract related to performance of this Agreement.

[You may find it helpful to share the Terms and Conditions and Procedures and Requirements with your finance department. Examples of audit documentation include, but are not limited to: expenditure ledger, payroll register entries and time sheets, personnel expenditure summary form, travel expense log, paid warrants, contracts and change orders, and invoices and/or canceled checks.]

11. Contractors/Subcontractors. The Grantee will be entitled to make use of its own staff and such contractors and subcontractors as are mutually acceptable to the Grantee and the IWMB. Any change in contractors or subcontractors must be mutually acceptable to the parties. Immediately upon termination of any such contract, the Grantee will notify the Grant Manager. All provisions of these Terms and Conditions shall apply to contractors and subcontractors. The Grantee shall provide a copy of these Terms and Conditions to all contractors and subcontractors.
12. Site Access. The Grantee shall allow the State to inspect sites at which grant funds are expended and related work being performed at any time during the performance of the work and for thirty (30) days after completion of the work.
13. Work Projects/Publicity and Acknowledgement. The Grantee shall submit copies of all draft public education or advertising materials to the Grant Manager for review and approval prior to the Grantee's use of materials. The Grantee must provide the Board with copies of all final products identified in the Work Statement. The Grantee shall acknowledge the IWMB's support each time projects funded, in whole or in part, by this Agreement are publicized in any news media, brochures or other type of promotional material
14. Confidentiality/Public Records. The Grantee and the IWMB acknowledge that each party may come into possession of information and/or data that may be deemed confidential or proprietary by the person or organization furnishing the information or data. Such information or data may be subject to disclosure under the California Public Records Act, Chapter 3.5 of Division 7 of Title 1 of the California Government Code ("GovtC") commencing with Section 6250. The IWMB agrees not to disclose such information or data furnished by the Grantee and to maintain such information or data as confidential when so designated by the Grantee in writing at the time it is furnished to the IWMB, but only to the extent that such information or data is exempt from disclosure under the California Public Records Act.

15. Ownership of Drawings, Plans, and Specifications. The IWMB shall have separate and independent ownership of all drawings, design plans, specifications, notebooks, tracings, photographs, negatives, reports, findings, recommendations, data, software, and memoranda of every description or any part thereof, paid for in whole or in any part with grant funds. Copies thereof shall be delivered to the IWMB upon request. The IWMB shall have the full right to use said copies in any manner when and where it may determine without any claim on the part of the Grantee, its vendors, contractors or subcontractors to additional compensation.
16. Copyrights and Trademarks.
- The Grantee assigns to the IWMB any and all rights, title, and interests to any copyrightable material or trademarkable material created or developed in whole or in any part as a result of this Agreement, including the right to register for copyright or trademark of such materials. Grantee shall require that its contractors and subcontractors agree that all such materials shall be the property of the IWMB. Upon written request by the Grantee, the IWMB may give at the Executive Director's sole discretion, written consent to the Grantee to retain all or any part of the ownership of these rights.
 - The IWMB hereby grants to the Grantee a royalty-free, nonexclusive, nontransferable license to reproduce, translate, and distribute copies of the materials produced pursuant to this Agreement, for nonprofit purposes, and to have or permit others to do so on the Grantee's behalf.
17. Patents. The Grantee assigns to the IWMB all rights, title and interest in and to each invention or discovery that may be capable of being patented, that is conceived of or first actually reduced to practice in the course of or under this Agreement, or with the use of any grant funds. Upon written request by the Grantee, the IWMB may give, at the Executive Director's sole discretion, written consent to the Grantee to retain all or any part of the ownership of these rights.
18. Real and Personal Property Acquired with Grant Funds.
- All real and personal property, including equipment and supplies, acquired with grant funds shall be used by the Grantee only for the purposes for which the IWMB approved their acquisition for so long as such property is needed for such purposes, regardless of whether the Grantee continues to receive grant funds from the IWMB for such purposes.
 - Subject to the obligations and conditions set forth in this section, title to all real and personal property acquired with grant funds, including all equipment and supplies, shall vest upon acquisition in the Grantee.
19. Grantee's Waiver of Claims and Recourse Against the State. The Grantee agrees to waive all claims and recourse against the State, its officials, officers, agents, employees, and servants, including, but not limited to, the right to contribution for loss or damage to persons or property arising out of, resulting from, or in any way connected with or incident to this Agreement. This waiver extends to any loss incurred attributable to any activity undertaken or omitted pursuant to this Agreement or any product, structure or condition created pursuant to, or as a result of, this Agreement.
20. Grantee's Indemnification and Defense of the State. The Grantee agrees to indemnify, defend, and save harmless the State, its officials, officers, agents, employees, and servants from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Grantee in the performance of this Agreement.
21. No Agency Relationship Created. The Grantee and the agents and employees of Grantee, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.
22. Assignment, Successors and Assigns.
- This Agreement may not be assigned by the Grantee, either in whole or in part, without the IWMB's prior written consent.
 - The provisions of this Agreement shall be binding upon and inure to the benefit of the IWMB, the Grantee, their respective successors and assigns.
23. Buy-Recycled Mandate. The Grantee shall certify under penalty of perjury, for the products, materials, goods, and supplies provided in the performance of this Agreement, the minimum, if not exact, percentage of recycled content, both secondary waste and post-consumer waste as defined in the Public Contract Code (PCC) Sections 12161, 12162, 12181, 12182, and 12200 as applicable. This certification shall be provided on the Recycled Content Certification Form available from the Grant Manager.

24. Waste Reduction. In the performance of this Agreement, the Grantee shall use recycled content, recycled or reusable products, and practice other waste reduction measures, where feasible and appropriate.
25. Non-Discrimination Clause. During the performance of this Agreement, Grantee, its contractors, and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. The Grantee, its contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Grantee, its contractors, and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (GovtC Sections 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder. The applicable regulations of the Fair Employment and Housing Commission implementing GovtC Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. The Grantee, its contractors, and subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.
26. Americans With Disabilities Act. The Grantee assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)
27. Drug-Free Workplace Certification.
- a. By signing this Agreement, the Grantee certifies under penalty of perjury to be in compliance with GovtC Section 8355 in matters relating to providing a drug-free workplace. The person signing this Agreement on behalf of the Grantee swears that he or she is authorized to legally bind the Grantee to this certification and makes this certification under penalty of perjury under the laws of the State of California.
 - b. As required by GovtC Section 8355, the Grantee agrees to:
 - (1) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions that will be taken against employees for violations.
 - (2) Establish a drug-free awareness program to inform employees about all of the following: (a) the dangers of drug abuse in the workplace, (b) the Grantee's policy of maintaining a drug-free workplace, (c) any available counseling, rehabilitation, and employee assistance programs, and (d) penalties that may be imposed upon employees for drug abuse violations.
 - (3) Require that each employee who works on the grant: (a) receive a copy of the drug-free policy statement of the Grantee, and (b) agree to abide by the terms of such statement as a condition of employment on the grant.
28. National Labor Relations Board Certification. By signing this Agreement, the Grantee certifies under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against the Grantee within the immediately preceding two-year period because of the Grantee's failure to comply with an order of a federal court which orders the Grantee to comply with an order of the National Labor Relations Board. (Not applicable to public entities.)
29. Child Support Compliance Act. For any agreement in excess of \$100,000, the Grantee acknowledges that:
- a. the Grantee recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
 - b. the Grantee, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
30. Air or Water Pollution Violation. Under the State laws, the Grantee shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

31. Grantee's Name Change. An amendment is required to change the Grantee's name as listed on this Agreement. Upon receipt of legal documentation of the name change, the IWMB will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of the amendment.
32. Corporate Qualifications to Do Business in California. When agreements are to be performed in the state by corporations, the IWMB will verify that the corporation is currently qualified to do business in California in order to ensure that all obligations due to the State are fulfilled.

"Doing business" is defined in Revenue and Taxation Code Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporation performing within the State not be subject to the franchise tax.

Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. The IWMB will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

33. Conflict of Interest. The Grantee needs to be aware of the following provisions regarding current or former state employees. If the Grantee has any questions on the status of any person rendering services or involved with this Agreement, the IWMB must be contacted immediately for clarification.

Current State Employees (PCC 10410):

- a. No officer or employee shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- b. No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (PCC 10411):

- a. For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- b. For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the twelve (12) month period prior to his or her leaving state service.

If the Grantee violates any provisions of above paragraphs, such action by the Grantee shall render this Agreement void. (PCC Section 10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC Section 10430 (e))

34. Union Organizing. By signing this Agreement, the Grantee hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this Agreement and hereby certifies that:
- a. No grant funds disbursed by this grant will be used to assist, promote or deter union organizing.
 - b. If the Grantee makes expenditures to assist, promote or deter union organizing, the Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that Grantee shall provide those records to the Attorney General upon request.
35. Resolution. A county, city, district, or other local public body must provide the IWMB with a copy of a resolution, order, motion, or ordinance of the local governing body, which by law has authority to enter into an agreement, authorizing execution of this agreement and designating the job title of the individual authorized to sign on behalf of the local public body.
36. Compliance. The Grantee shall comply fully with all applicable federal, state, and local laws, ordinances, regulations, and permits. The Grantee shall provide evidence that all local, state, and/or federal permits, licenses, registrations, and approvals for the purposes for which grant funds are to be expended have been

secured. The Grantee shall maintain compliance with such requirements throughout the grant period. The Grantee shall ensure that the requirements of the California Environmental Quality Act are met for any approvals or other requirements necessary to carry out the terms of this Agreement. Any deviation from the requirements of this section shall result in non-payment of grant funds.

37. Controlling Law. This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
38. Venue. All proceedings concerning the validity and operation of this Agreement and the performance of the obligations imposed upon the parties hereunder shall be held in Sacramento County. The parties hereby waive any right to any other venue.
39. Remedies. Unless otherwise expressly provided herein, the rights and remedies hereunder are in addition to, and not in limitation of, other rights and remedies under this Agreement, at law or in equity, and exercise of one right or remedy shall not be deemed a waiver of any other right or remedy.
40. Force Majeure. Neither the IWMB nor the Grantee, its contractors, vendors or subcontractors, if any, shall be responsible hereunder for any delay, default or nonperformance of this Agreement, to the extent that such delay, default or nonperformance is caused by an act of God, weather, accident, labor strike, fire, explosion, riot, war, rebellion, sabotage or flood, or other contingencies unforeseen by the IWMB or the Grantee, its contractors, vendors or subcontractors and beyond the reasonable control of such party.
41. Amendment. No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties, and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
42. Time Is of the Essence. Time is of the essence of this Agreement.
43. Unenforceable Provision. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be effected thereby.
44. Communications. All communications from the Grantee to the IWMB shall be directed to the Grantee's assigned Grant Manager, California Integrated Waste Management Board, P.O. Box 4025 MS-21 Sacramento, CA 95812-4025. All notices required by this Agreement shall be given in writing and sent by prepaid mail, or by personal delivery or by FAX followed by prepaid mail or personal delivery.
45. Entire Agreement. This Agreement supersedes all prior agreements, oral or written, made with respect to the subject hereof and, together with all attachments hereto, contains the entire agreement of the parties.